

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

OLABISI WALTER CARLTON-CAREW,  
*Petitioner.*

No. 2 CA-CR 2015-0106-PR  
Filed April 21, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

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Petition for Review from the Superior Court in Maricopa County

No. CR2003035106001SE

The Honorable Carey Snyder Hyatt, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Catherine Leisch, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

John W. Rood III, Phoenix  
*Counsel for Petitioner*

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MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Howard and Judge Vásquez concurred.

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K E L L Y, Presiding Judge:

¶1 Petitioner Olabisi Carlton-Carew seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Carlton-Carew has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Carlton-Carew was convicted of child abuse in 2004. The trial court suspended the imposition of sentence and placed Carlton-Carew on a twelve-month term of probation. In March 2005, the court determined Carlton-Carew had violated the terms of his probation, but returned him to probation, for a three-year term. Carlton-Carew appealed that decision and this court affirmed the court's ruling. *State v. Carlton-Carew*, No. 1 CA-CR 05-0429 (memorandum decision filed Feb. 28, 2006). In January 2006, the court again found Carlton-Carew had violated the terms of his probation and revoked probation, imposing a six-month term in county jail.

¶3 In April 2013, Carlton-Carew filed a petition for post-conviction relief, alleging that the victim, his daughter, now nineteen years old, had recanted her claim of abuse. He asserted this recantation was newly discovered evidence that entitled him to relief under Rule 32.1(e). The trial court summarily denied relief.

¶4 On review, Carlton-Carew argues the trial court erred in summarily dismissing his petition and contends he has raised a colorable claim and is entitled to an evidentiary hearing. Before a

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trial court may grant post-conviction relief based on the discovery of new evidence, the following requirements must be met:

(1) the evidence must appear on its face to have existed at the time of trial but be discovered after trial; (2) the motion must allege facts from which the court could conclude the defendant was diligent in discovering the facts and bringing them to the court's attention; (3) the evidence must not simply be cumulative or impeaching; (4) the evidence must be relevant to the case; (5) the evidence must be such that it would likely have altered the verdict, finding, or sentence if known at the time of trial.

*State v. Bilke*, 162 Ariz. 51, 52-53, 781 P.2d 28, 29-30 (1989); *see also* Ariz. R. Crim. P. 32.1(e) (newly discovered material facts exist if discovered after trial, defendant exercised due diligence, and facts "are not merely cumulative or used solely for impeachment"). And, although courts generally are skeptical of recanted testimony claims, *State v. Krum*, 183 Ariz. 288, 294, 903 P.2d 596, 602 (1995), such claims may form the basis of a claim pursuant to Rule 32.1(e), *State v. Hickie*, 133 Ariz. 234, 238, 650 P.2d 1216, 1220 (1982) ("[E]vidence indicating [a witness] lied at trial qualifies as 'newly discovered material facts' pursuant to Rule 32.1. . .").

¶5 In this case, however, Carlton-Carew pled guilty. This court has stated that "Rule 32.1(e) is applied quite restrictively to overturn guilty pleas," primarily because by pleading guilty a defendant waives all nonjurisdictional defenses. *State v. Fritz*, 157 Ariz. 139, 140, 755 P.2d 444, 445 (App. 1988). Carlton-Carew, however, relies on our decision in *Fritz* to support his claim that he may obtain relief pursuant to Rule 32.1(e) despite his plea. But we agree with the trial court that *Fritz* is inapplicable here and that Rule 32.1(e) does not afford Carlton-Carew relief.

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¶6 Had Carlton-Carew entered an *Alford*<sup>1</sup> plea, in which he maintained his innocence, the victim's recantation may have played a significant role in the outcome of his case and his ultimate decision to take the plea. However, Carlton-Carew admitted guilt, agreed to a factual basis given in support of the plea, and indeed, according to testimony given by an investigating officer at the preliminary hearing, admitted to having hit the victim with a belt. The officer also testified that marks had been observed on the child consistent with having been hit by a belt. In view of the circumstances here, we cannot say the court abused its discretion in concluding Carlton-Carew had failed to state a claim of newly discovered evidence entitling him to relief.

¶7 Therefore, although we grant the petition for review, we deny relief.

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).